Filed 12/21/15 In re Destiny S. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re DESTINY S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. DESTINY S., Defendant and Appellant.	F070590 (Super. Ct. No. 14CEJ600011-3) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Gregory T. Fain, Judge.

Carol Koenig, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Julie A. Hokans, Deputy Attorney General, for Plaintiff and Respondent.

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[*] Before Levy, Acting P.J., Poochigian, J. and Franson, J.

INTRODUCTION

On October 16, 2014, a Welfare and Institutions Code section 602 petition was filed in the juvenile court alleging appellant Destiny S., a minor, committed a felony by receiving stolen property, a motor vehicle (Pen. Code, § 496d, subd. (a)).

At the conclusion of a jurisdictional hearing, the court found the allegation true, but sustained the charge as a misdemeanor. Appellant was temporarily removed from the custody of her parent. She was also committed to a girls' treatment program for a period not to exceed 63 days, and other terms and conditions of probation were imposed.

On appeal, appellant contends there is insufficient evidence to support the court's finding that she was in receipt of a stolen vehicle. We disagree and affirm the judgment.

FACTS

On October 14, 2014, at approximately 5:16 a.m., Adelita Ortiz heard her vehicle's engine start. When she went outside her apartment to investigate, she discovered her vehicle, a 1996 or 1997 Acura TL, was missing. Ortiz had not given anyone permission to use the vehicle. She called police to report her Acura stolen.

At approximately 12:00 p.m. that same day, California Highway Patrol Auto Theft Investigator Daniel Havens located Ortiz's Acura parked in an alley, north of McKinley and east of Normal Avenue in Fresno County. Investigator Havens, in conjunction with other officers, conducted surveillance on the vehicle.

At 3:00 p.m., surveillance units followed the Acura as it left the alley. Investigator Havens did not personally follow the vehicle at that time. He observed the vehicle again at approximately 3:15 p.m. on State Route 168, and then again at 3:30 p.m. when the Acura pulled into an apartment complex where appellant resided.[1]

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[1] After seeing the vehicle again at 3:15 p.m., Investigator Havens testified he did not personally follow the Acura to appellant's apartment complex, as various units were following the vehicle. The record does not indicate how many subjects initially entered the Acura as it left the alley at 3:00 p.m.

Officers initiated a traffic stop of the Acura as it pulled into a parking stall, before any of the vehicle's occupants could exit. When the Acura was stopped, officers discovered there were three occupants inside, rather than the two they observed during surveillance. At the jurisdictional hearing, Investigator Havens identified appellant as the vehicle's right front seat passenger. There was also a female driver and a male sitting in the left rear seat of the vehicle. All three subjects were detained.

Investigator Havens inspected the Acura from the open driver's side door and observed that although the vehicle was still running, there were no keys in the ignition. He also noticed the vehicle's stereo was missing and a set of shaved keys were lying on the driver's side floorboard of the vehicle. Three of the four keys started the vehicle. Ortiz testified the keys did not belong to her.

Investigator Havens testified he did not know whether the shaved keys would have been visible from the front passenger's vantage point. No one was seated in the vehicle when Investigator Havens made his observations. He also stated that after the group was taken to the Juvenile Justice Center they were conversing and appeared to be comfortable with one another.

The Acura was returned to Ortiz at 4:00 p.m. that same day. Ortiz testified the vehicle had no visible signs of damage as a result of the theft. Prior to the theft, the Acura's stereo, as well as the bottom half of the ignition housing were missing, and some wiring was exposed.

DISCUSSION

Appellant contends the evidence was insufficient to show she had knowledge the Acura was stolen, and that she was in possession of the stolen Acura. We disagree.

In reviewing a conviction challenged for insufficiency of the evidence, we "'"must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty

beyond a reasonable doubt.'"'" (*People v. Lenart* (2004) 32 Cal.4th 1107, 1125.) Our review is limited in scope. "[W]e are bound to give due deference to the trier of fact and not retry the case ourselves." (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.) In evaluating a claim of insufficiency of the evidence on appeal, the test is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. (*In re Jose P.* (2003) 106 Cal.App.4th 458, 465-466.)

"[T]o sustain a conviction for receiving stolen property, the prosecution must prove (1) the property was stolen; (2) the defendant knew the property was stolen; and, (3) the defendant had possession of the stolen property." (*People v. Land* (1994) 30 Cal.App.4th 220, 223 (*Land*).) The fact that a defendant had knowledge property was stolen may be proven by circumstantial evidence. (*People v. Bycel* (1955) 133 Cal.App.2d 596, 599.) Further, possession of stolen property, in addition to suspicious circumstances or an inadequate explanation of the possession, will justify an inference the defendant received property with the knowledge it had been stolen. (*People v. Boinus* (1957) 153 Cal.App.2d 618, 622.)

As a preliminary matter, neither party challenges the court's finding the Acura was stolen. Ortiz testified no one had permission to use her vehicle when she discovered it was missing, and she reported it stolen on this basis. Accordingly, the evidence supports the court's finding the Acura was stolen.

We also find sufficient evidence to infer appellant had knowledge the Acura was stolen. The People's Exhibit No. 2 is a photograph of the inside of Ortiz's vehicle, taken from the vantage point of the right front passenger's seat. The photograph depicts the ignition and steering column of the vehicle, and shows extensive damage to the ignition housing, exposed wiring, and that the vehicle's stereo was removed. Ortiz testified these conditions existed prior to the theft of the vehicle, which was at least 18 years old.

We agree with appellant these conditions, without more, would not be sufficient to infer appellant had knowledge the vehicle was stolen. A vehicle nearly 20 years old would have normally sustained significant deterioration. While such conditions would be noticeable, it would not necessarily lead a passenger to infer a vehicle was stolen.

However, the court based its finding on the condition of the Acura, in addition to other facts. The court also found significant the discovery of shaved keys on the driver's side floorboard of the Acura. It reasoned the keys would have been in view of the front seat passenger, and that the vehicle running without keys would have put appellant on notice of the fact the vehicle was stolen. During the 30 minutes appellant was in the vehicle, it is reasonable to infer she would have noticed it was running without keys in the ignition, an obvious condition which should have raised questions about the legitimacy of the vehicle. Thus, we find the damage to the Acura, the set of shaved keys lying on the driver's floorboard, in addition to the fact the vehicle was running without keys in the ignition system, were conditions sufficient to establish appellant had knowledge the vehicle was stolen.

For the reasons set forth below, we also find substantial evidence supports the conclusion appellant exercised dominion and control over the vehicle such that she was in constructive possession of the Acura.

"Possession of the stolen property may be actual or constructive and need not be exclusive." (*Land, supra*, 30 Cal.App.4th at p. 223, fn. omitted.) "Physical possession is also not a requirement. It is sufficient if the defendant acquires a measure of control or dominion over the stolen property." (*Id.* at p. 224.) To support an inference of control or dominion, something more must be shown than the defendant's mere presence near stolen property, but such additional circumstances may be slight. (*Ibid.*; *People v. Zyduck* (1969) 270 Cal.App.2d 334, 335-336 (*Zyduck*).)

No single factor or combination of factors point invariably toward a finding of constructive possession of a stolen vehicle by a passenger. (*Land, supra*, 30 Cal.App.4th

at p. 228.) However, possession may be inferred where a passenger is present in a stolen vehicle, in addition to evidence "the passenger knew the driver, knew that the vehicle was stolen, and intended to use the vehicle for his or her own benefit and enjoyment." (*Id.* at p. 227.) From these facts, a jury could reasonably infer the passenger had the intent and capacity to control the stolen vehicle, supporting a finding of constructive possession. (*Ibid.*)

In *Land,* the defendant and a friend were drinking together. (*Land, supra,* 30 Cal.App.4th at p. 222.) The defendant's friend left and returned with a vehicle and the two drove to another town. (*Ibid*.) Once inside the vehicle, the friend told the defendant it was stolen. (*Ibid*.) After they had been driving for some time, the driver said he wanted to rob someone. (*Ibid*.) They resumed driving, then intentionally bumped another car, robbed and shot the driver of the other car, leaving him for dead, and took flight in the victim's car. (*Id.* at pp. 222-223.) The jury convicted the defendant of receiving a stolen car. (*Id.* at p. 223.) The issue on appeal was "under what circumstances, [may] a passenger in a stolen car, knowing the car is stolen, … be properly found to have possession or dominion and control over the stolen vehicle." (*Id.* at p. 225.)

The *Land* court noted with approval an opinion of the New Jersey Supreme Court, *State v. McCoy* (1989) 116 N.J. 293 (*McCoy*). In *McCoy,* the court held evidence a defendant walked over and placed his hands on a stolen vehicle with the intent to ride around as a passenger was insufficient to establish possession of a stolen vehicle. (*Land, supra,* 30 Cal.App.4th at pp. 226-227.) The *Land* court found persuasive *McCoy*'s conclusion that "'an inference of possession may arise from a passenger's presence in a stolen automobile when that presence is coupled with additional evidence that the passenger knew the driver, knew that the vehicle was stolen, and intended to use the vehicle for his or her own benefit and enjoyment. Those facts could lead a jury to infer that it is more probable than not that the passenger had both the intention and the capacity

to control the stolen vehicle. A jury might infer that such a passenger could exert control over the vehicle, an inference that would support a finding of constructive possession.'" (*Land, supra,* 30 Cal.App.4th at p. 227, quoting *McCoy, supra,* 116 N.J. at p. 588.) The *Land* court concluded the defendant's "close relationship to the driver, use of the vehicle for a common criminal mission, and stops along the way before abandoning it," established the defendant was in a position to exert control over the vehicle, thereby supporting a finding of constructive possession. (*Land, supra,* at p. 228.)

In *In re Anthony J.* (2004) 117 Cal.App.4th 718 (*Anthony J.*), a minor was at a fast food restaurant when a friend told him to "'come on'" and they got into a nearby vehicle. (*Id*. at p. 723.) The minor had seen the driver once before at a cousin's house, but did not know the driver well, nor did he know the vehicle was stolen. (*Ibid*.) The group drove for 20 to 30 minutes, listening to the radio. (*Ibid*.) When the vehicle stopped, everyone got out. (*Ibid*.) As they were walking to a store, the minor dropped something and bent down to pick it up. (*Ibid*.) At that point, the others with him began to run, the minor did not know why they were running, but ran after them. (*Ibid*.) When he caught up with them, he heard them say the vehicle was stolen. The group was detained by the police, who discovered the vehicle had been stolen three days prior. (*Ibid*.)

The *Anthony J.* court held the evidence did not show the defendant had actual or constructive possession of the stolen vehicle. (*Anthony J., supra,* 117 Cal.App.4th at p. 729.) The court found the facts of the case distinguishable from *Land,* and at most, demonstrated the minor's mere presence in the stolen vehicle. (*Ibid*.) It reasoned no evidence showed the minor and the vehicle's driver were friends or had committed crimes together previously, the minor was not a passenger in the vehicle shortly after it was stolen, and no facts showed the vehicle was used for the driver and minor to jointly commit crimes. (*Ibid*.)

This case is more in line with *Land* than with *Anthony J.* As *Land* noted, in determining whether a defendant exercised constructive control over a stolen vehicle, the

court will consider whether "[1] the passenger knew the driver, [2] knew that the vehicle was stolen, and [3] intended to use the vehicle for his or her own benefit and enjoyment." (*Land, supra,* 30 Cal.App.4th at p. 227.)

First, sufficient evidence was presented to show the driver and appellant were friends, similar to *Land*, rather than mere acquaintances, as in *Anthony J*. Appellant was detained after receiving a ride home by the driver of the stolen Acura while she was sitting in the front passenger seat of the vehicle. In addition, Investigator Havens testified appellant and her companions were talking and appeared to be comfortable with one another after they were taken into custody. Although we do not presume the driver and appellant were close friends based on these facts, it is reasonable to infer they were comfortable and familiar with one another, which distinguishes this case from *Anthony J*., where the driver and minor had met on only one previous occasion. (*Anthony J., supra,* 117 Cal.App.4th at p. 723.) Moreover, because no single factor points invariably toward a finding of constructive possession (*Land, supra,* 30 Cal.App.4th at p. 228), this element is not dispositive.

Second, as previously set forth, sufficient evidence was presented to establish appellant had knowledge the vehicle was stolen.

Third, we also find appellant used the Acura for her own benefit and enjoyment. Although appellant was only in the vehicle for 30 minutes, she was detained in front of her apartment complex. Because appellant received a ride home, she plainly used the Acura for her own benefit and enjoyment, as the vehicle was instrumental to that end. Further, assuming appellant and the driver were merely acquaintances, appellant would had to have given the driver directions to her home, demonstrating both the intent and capacity to control the vehicle.

The evidence was sufficient to establish appellant had knowledge the Acura was stolen and she was in constructive possession of the vehicle. Thus, substantial evidence supports the trial court's conclusion appellant received stolen property.

DISPOSITION

The judgment is affirmed.